

July 5, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Each Electrical Utility's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended)

Duke Energy Carolinas, LLC and Duke Energy Progress, LLC Comments on Procedural Schedule

Docket No. 2019-176-E

Docket No. 2019-185-E (Duke Energy Carolinas, LLC)

Docket No. 2019-186-E (Duke Energy Progress, LLC)

Dear Ms. Boyd,

Pursuant to Order No. 2019-457, Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP,” and together with DEC, the “Companies” or “Duke”) hereby files comments on the procedural schedule to be adopted by the Public Service Commission of South Carolina (the “Commission”) in the above-referenced dockets. To avoid re-stating the arguments offered by Duke in earlier filings on this matter,¹ the Companies have attached to this filing the comments filed previously regarding this matter.

Duke’s position on the procedural questions at issue in these dockets is straightforward and remains unchanged from its initial filing on these matters on June 17, 2019. The Commission’s consideration of all of the “PURPA Implementation and Administration Provisions” of the Act, as directed by Section 58-41-20(A)(2), should occur in a single docket for each electrical utility based upon a reasonable procedural schedule that meets the procedural requirements of the Act. For purposes of judicial economy and efficiency, the Companies have recommended the dockets

¹ The Companies filed letters/comments on these procedural matters on June 17, 2019; June 20, 2019; June 24, 2019; and June 25, 2019.

The Honorable Jocelyn G. Boyd
 July 5, 2019
 Page 2

assigned to DEC and DEP be consolidated. In response to Johnson Development Associates, Inc. (“Johnson Development”) and the South Carolina Solar Business Alliance, Inc. (“SCSBA”) Petition, Duke respectfully requests the Commission reject Johnson Development’s and SCSBA’s proposed multi-phased proceeding, as unreasonable (and very likely infeasible), procedurally deficient, inappropriate, and inconsistent with the Act; close Docket No. 2019-176-E; and, instead, adopt the Companies’ procedural schedule presented in Docket Nos. 2019-186-E and 2019-185-E on June 20, 2019, to administer the PURPA Implementation and Administration Provisions of the Act for DEC and DEP.

Of paramount concern to the Companies is the short period of time remaining for the Commission to issue a decision on a number of complex and novel issues, which are litigated and highly contested at state utility commissions across the country. Given the express statutory requirement that these proceedings “shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing,”² the Companies respectfully renew their request for the Commission to promptly establish a procedural schedule that is consistent with the statutory requirements.

While the details of the procedural approach advocated for by Johnson Development and SCSBA seems to change with each of their filings in these dockets³, their “multi-phase proceeding” approach remains in clear violation of Section 58-41-20(A)(2). The most recent proposal by Johnson Development filed on July 3, 2019, provides no opportunity for discovery in either proceeding.⁴ Johnson Development’s proposed schedule⁵ would also seemingly have the Commission improperly hold a hearing without any evidence being presented, as Johnson Development only recommends the Commission provide for the filing of “briefs,” and not pre-filing of testimony, in the initial phase of the proceeding. It is very concerning to the Companies that Johnson Development would have the Commission issue a decision on the details of the avoided cost methodology without hearing from a single expert in this area through the form of prefiled and ultimately sworn testimony subject to cross examination, not only as envisioned by Act 62, but as a part of sound regulatory practice. In addition to this procedural deficiency, Johnson Development’s proposed procedural schedule also fails to comply with the Act as it fails to address the Commission’s consideration of the standard offer power purchase agreement, standard offer terms and conditions, form purchase power agreements, or notice of commitment

² See S.C. Code Ann. Section 58-41-20(A)(2).

³ Most notably, Johnson Development seems to have abandoned its recommendation presented in the June 21, 2019 Joint Petition to Set Consolidated Schedule, for the Commission to hold “a technical conference” with “initial comments” and “supplemental comments” preceding and following the recommend technical conference. Johnson Development’s proposed scheduling order appended to its July 3, 2019, Comments now proposes the filing of “briefs” and a “hearing” during Johnson Development’s recommended first phase of the hearing.

⁴ The Companies note that S.C. Code Regs Ann. § 103-833 provides parties upon whom interrogatories or requests for production of documents have been served at least 20 days to respond.

⁵ Included as Attachment B to Johnson Development’s July 3, 2019, Comments.

The Honorable Jocelyn G. Boyd
July 5, 2019
Page 3

forms, each of which the Commission is required to consider in the “docket” established for review and approval of each electrical utility’s implementation and administration of PURPA pursuant to Section 58-41-20(A).⁶

Duke also renews the Companies’ concerns expressed in the Companies’ prior Comments of June 20, 2019, and June 25, 2019, on these procedural matters, as Johnson Development’s recommended procedural schedule is highly impractical if not completely infeasible. Johnson Development’s recommended schedule creates a 14-day period for the parties and the Commission’s third-party expert to consider all methodological issues outlined by Johnson Development and SCSBA in their June 25, 2019, letter (including a solar integration charge; seasonal allocation of capacity needs and costs; methodologies for projection of fuel costs as they relate to avoided energy costs; environmental costs avoided by individual or aggregated QF; implications of battery storage; etc.) To Duke’s knowledge, Johnson Development has never participated in any proceeding before this Commission, much less a complex proceeding addressing PURPA implementation. The notion that so many contentious issues could be “litigated” in a 14-day period defies experience and logic. The Companies remain concerned that Johnson Development is effectively setting the Commission up to be challenged on both procedural and substantive grounds that it has failed to comply with the requirements of the Act.

Finally, Johnson Development’s statement to the Commission that the statute requires the Commission to “first establish an avoided cost methodology for each utility”⁷ is entirely false. No language in the entirety of Act 62 even alludes to a preliminary determination of the avoided cost methodology followed by the consideration of avoided cost rates, and to represent as much to the Commission is improper and misleading.

In sum, the Companies hereby renew their request for the Commission to administratively close Docket No. 2019-176-E and adopt the procedural scheduled filed by the Companies in Docket Nos. 2019-186-E and 2019-185-E on June 20, 2019. Addressing the issues outlined in Section 58-41-20(A) in one proceeding through utility-specific dockets is consistent with the Act and does not prejudice any party.

The Companies appreciate the Commission’s prompt attention to these matters. Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

⁶ It is unclear to Duke whether this omission was intentional or inadvertent, as Johnson Development’s and SCSBA’s June 18, 2019 Joint Comments recommended a separate consolidated docket be established to consider these issues. Duke reiterates the Companies’ opposition to establishing a separate docket to consider these matters, and continues to support all PURPA Implementation and Administration Provisions for DEC and DEP being considered in a single docket for each utility.

⁷ See Johnson Development letter filed July 3, 2019 at p. 2.

The Honorable Jocelyn G. Boyd
July 5, 2019
Page 4



Rebecca J. Dulin

Attachments

cc: Andrew M. Bateman, Office of Regulatory Staff
Nanette S. Edwards, Office of Regulatory Staff
Jeffrey M. Nelson, Office of Regulatory Staff
James Goldin, Nelson, Mullins, Riley & Scarborough, LLP
Robert R. Smith, II, Moore & Van Allen, PLLC
Becky Dover, SC Department of Consumer Affairs
Carri Grube-Lybarker, SC Department of Consumer Affairs
Heather Shirley Smith, Duke Energy Corporation
Weston Adams, III, Nelson, Mullins, Riley & Scarborough, LLP
K. Chad Burgess, Dominion Energy South Carolina, Inc.
Matthew W. Gissendanner, Dominion Energy South Carolina, Inc.

June 17, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Each Electrical Utility's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended)
Docket No. 2019-176-E
Docket No. 2019-185-E (Duke Energy Carolinas, LLC)
Docket No. 2019-186-E (Duke Energy Progress, LLC)

Dear Ms. Boyd,

On May 23, 2019, the Public Service Commission of South Carolina (the “Commission”) opened Docket No. 2019-176-E to initiate a proceeding pursuant to Act 62¹ to “establish each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary” as required by newly enacted S.C. Code Section 58-41-20(A) (the “PURPA Implementation and Administration Provisions”). Subsequently, pursuant to a motion adopted by the Commission at its weekly agenda meeting on May 29, 2019, the Commission instructed the Chief Administrator to open separate dockets for each electrical utility in which the PURPA Implementation and Administration Provisions would be addressed. Accordingly, on May 30, 2019, Docket No. 2019-186-E was opened for Duke Energy Progress, LLC (“DEP”) and Docket No. 2019-185-E was opened for Duke Energy Carolinas, LLC (“DEC,” and together with DEP, the “Companies” or “Duke”). Docket No. 2019-184-E was opened for Dominion Energy South Carolina, Incorporated.

To reduce confusion regarding the seemingly duplicative nature of these dockets and to enhance transparency associated with implementation of the Act², DEP and DEC respectfully request that Docket No. 2019-176-E be administratively closed.

¹ South Carolina Energy Freedom Act, H. 3659, 123rd Legislative Session (2019).

² For example, on Friday, June 13, 2019, Johnson Development Associates, Incorporated filed nearly identical petitions to intervene in DEC's and DEP's PURPA Implementation and Administration Provisions dockets, as well as in the generic docket previously established by the Commission. Upon information and belief, the Commission opened the generic docket for the same purpose and to consider identical issues as it intends to consider in the utility-specific dockets.

The Honorable Jocelyn G. Boyd
June 17, 2019
Page 2

The Companies intend to file a proposed procedural schedule in Docket Nos. 2019-186-E and 2019-185-E in the near future given the Commission's upcoming statutory deadline by which to issue a decision in those dockets. The Companies will then conform or replace their application and direct testimony filed in Docket No. 1995-1192-E into Docket Nos. 2019-185-E and 2019-186-E, as the issues under consideration in Docket No. 1995-1192-E are substantially similar to those to be considered in Docket Nos. 2019-185-E and 2019-186-E.

Should you have any questions regarding this request, please do not hesitate to contact me at 803.988.7130.

Sincerely,



Rebecca J. Dulin

Attachments

Cc: Ms. Becky Dover, SC Department of Consumer Affairs
Ms. Carri Grube-Lybarker, SC Department of Consumer Affairs
Ms. James Goldin, Nelson Mullins Riley & Scarborough, LLP
Mr. Jeffrey M. Nelson, Office of Regulatory Staff
Mr. Richard L. Whitt, Austin & Powers, P.A.
Ms. Heather Smith, Duke Energy Corporation

June 20, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Each Electrical Utility's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended)
Docket No. 2019-185-E (Duke Energy Carolinas, LLC)
Docket No. 2019-186-E (Duke Energy Progress, LLC)

Dear Ms. Boyd,

On June 17, 2019, Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP,” and together with DEC, the “Companies” or “Duke”) filed with the Public Service Commission of South Carolina (the “Commission”) in the above-referenced dockets a letter requesting to administratively close Docket No. 2019-176-E and stating their intent to address the provisions of newly enacted S.C. Code Section 58-41-20(A) related to “each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary” (the “PURPA Implementation and Administration Provisions”) under the utility-specific dockets (Docket No. 2019-185-E for DEC and Docket No. 2019-186-E for DEP) opened at the direction of the Commission. The Companies stated that they intended to file a proposed procedural schedule in Docket Nos. 2019-185-E and 2019-186-E in the near future given the Commission’s upcoming statutory deadline by which to issue a decision in those dockets.

Given that the Companies intend to file a single application and identical testimony in these proceedings, just as they did in the pending avoided cost case in Docket No. 1995-1192-E, the Companies request to consolidate Docket Nos. 2019-185-E and 2019-186-E for administrative purposes. The Companies propose the following procedural schedule for the consolidated dockets:

DEC/DEP Direct Testimony: August 14, 2019

Intervenor/ORS Direct Testimony: September 11, 2019

The Honorable Jocelyn G. Boyd
June 20, 2019
Page 2

DEC/DEP Rebuttal Testimony: October 2, 2019
Intervenor/ORS Surrebuttal Testimony: October 11, 2019
Hearing: Week of October 21, 2019

The South Carolina Office of Regulatory Staff ("ORS") does not object to this proposed schedule.

In order to move this case forward under the statutorily-imposed timeframe, the Companies request the Commission expeditiously consider this request and approve the proposed schedule set forth herein. Should you have any questions regarding this request, please do not hesitate to contact me at 803.988.7130.

Sincerely,



Rebecca J. Dulin

cc: Ms. Becky Dover, SC Department of Consumer Affairs
Ms. Carri Grube-Lybarker, SC Department of Consumer Affairs
Mr. James Goldin, Nelson Mullins Riley & Scarborough, LLP
Mr. Weston Adams, III, Nelson Mullins Riley & Scarborough, LLP
Mr. Jeffrey Nelson, Office of Regulatory Staff
Mr. Richard L. Whitt, Austin & Rogers, P.A.
Ms. Heather Shirley Smith, Duke Energy Corporation

June 20, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Each Electrical Utility's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended)
Docket No. 2019-176-E
Docket No. 2019-185-E (Duke Energy Carolinas, LLC)
Docket No. 2019-186-E (Duke Energy Progress, LLC)

Dear Ms. Boyd,

On June 17, 2019, Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP,” and together with DEC, the “Companies” or “Duke”) filed with the Public Service Commission of South Carolina (the “Commission”) in the above-referenced dockets a letter requesting to administratively close Docket No. 2019-176-E and stating their intent to address the provisions of newly enacted S.C. Code Section 58-41-20(A) related to “each electrical utility's standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary” (the “PURPA Implementation and Administration Provisions”) under the utility-specific dockets (Docket No. 2019-185-E for DEC and 2019-186-E for DEP) opened at the direction of the Commission. On June 18, 2019, Johnson Development Associates, Inc. (“Johnson Development”) filed a letter asking the Commission to consolidate the PURPA Implementation and Administration Provisions of Act 62 for all electrical utilities into one docket (“June 18 Letter”). Additionally, on June 18, 2019, the South Carolina Solar Business Alliance (“SCSBA”) and Johnson Development filed joint comments on this matter (“Joint Comments”), setting forth a proposed procedural approach, which seemingly would require consolidation of the dockets and two sequential proceedings.¹ Duke responds herein to the June 18 Letter and Joint Comments and requests the Commission

¹ The Joint Comments are unclear as to whether the procedural approach would require a third proceeding to address form contract power purchase agreements, notice of commitment to sell forms and contract length.

The Honorable Jocelyn G. Boyd
June 20, 2019
Page 2

issue a decision expeditiously approving the procedural schedule filed by the Companies today in Docket Nos. 2019-186-E and 2019-185-E, or, in the alternative, set the issue for oral argument within two weeks, in light of the November 15, 2019 deadline by which the Commission must act on the PURPA Implementation and Administration Provisions.

The procedural approach to implementing PURPA Implementation and Administration Provisions of the Act set forth by Johnson Development and SCSBA in their Joint Comments is in clear violation of the requirements of S.C. Code Ann. Section 58-41-20(A)(2); fails to provide adequate time for the Commission to consider the complex and numerous issues required to be addressed by the Commission; and deprives Companies and other parties the right of procedural due process.²

First, the proposed schedule set forth by Johnson Development and SCSBA is a clear violation of S.C. Code Ann. Section 58-41-20(A)(2), which requires that proceedings implementing the PURPA Implementation and Administration Provisions of Act 62 “shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing.” Johnson Development and SCSBA propose that, with regard to the proceeding to address the avoided cost methodology, the parties file comments instead of sworn testimony and that the Commission hold a technical conference, upon which it will make its decision. Additionally, the schedule makes no mention of and provides no time for the opportunity for discovery. This is blatantly inconsistent with the requirements S.C. Code Ann. Section 58-41-20(A)(2). This conflict with Act 62 requires the Commission to reject Johnson Development’s and SCSBA’s proposed procedural approach schedule.

Notwithstanding the conflict with Act 62, the procedural schedule described in the Joint Comments is wholly impracticable, unreasonably segregating issues while failing to provide any reasonable measure of time for the Companies to put forward their case and the Commission and its consultant to review the case. Johnson Development and SCSBA are requesting the Commission hold two proceedings sequentially, with the latter proceeding not to begin before the conclusion of the first proceeding. As of the date of this filing, less than five months exist before the Commission must issue a decision on the myriad of topics set forth in the PURPA Implementation and Administration Provisions of Act 62. Simply put, sufficient time does not exist for the parties to conduct two sequential proceedings, which “shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing” in accordance with S.C. Code Ann. Section 58-41-20(A)(2). The proposed schedule provides the Commission 11 business days to issue its decision on these issues after the first comments are filed. The Companies submit that it is not feasible to conduct a proceeding evaluating the three

² The Companies also contend that consolidating all utilities into single proceedings for the purpose of implementing the PURPA Implementation and Administration Provisions is inappropriate and unreasonable, but, but given that the proposed approach clearly violates S.C. Code Ann. Section 58-41-20(A)(2), the Companies have not included this argument in this response.

The Honorable Jocelyn G. Boyd
 June 20, 2019
 Page 3

utilities' avoided cost methodologies, including the assumptions underlying those methodologies over the course of 11 business days.

As a general matter, the Companies also object to the proposal by Johnson Development and SCSBA that the Commission should issue a decision based on information exchanged in a "technical conference." While technical conferences have been held by stakeholder groups in the past to negotiate issues toward a potential consensus, the Companies are not aware of any instance where the Commission has participated in those workshops, and certainly not of any instance where the Commission has relied on information exchanged in such a forum in making a decision in a contested proceeding. As this Commission is well aware, any information offered for inclusion into the record should be subject to objection or cross examination and comply with the rules of evidence pursuant to S.C. Code Ann. Section 1-23-330. Otherwise, the Companies' rights to procedural due process will be violated. Again, S.C. Code Ann. Section 58-41-20(A)(2) is clear that proceedings pursuant to this statutory section "shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing." Accordingly, it would be wholly improper for the Commission to adjudicate these issues without an opportunity for discovery, testimony, or an evidentiary hearing.

In sum, the procedural approach and schedule supported by Johnson Development and SCSBA violates S.C. Code Ann. Section 58-41-20(A)(2) and the parties' rights to procedural due process, in addition to presenting a wholly unworkable (and incomplete) procedure schedule that provides entirely insufficient time for these complex issues to be litigated and decided by the Commission. Therefore, the Companies respectfully request the Commission reject the proposed schedule of Johnson Development and SCSBA and adopt the procedural schedule filed by the Companies contemporaneously with this letter in Docket Nos. 2019-186-E and 2019-185-E. As described in the Companies' letter, the ORS does not object to the Companies' proposed schedule. Alternatively, the Companies request the Commission schedule this controversy for oral argument within the next two weeks. The Companies submit that should this issue be scheduled for oral argument, S.C. Code Ann. Section 58-3-260(C)(6)(vi) prevents Johnson Development from discussing these contested procedural issues at its upcoming allowable *ex parte* briefing within 20 days of such oral argument.³

³ In its June 18 Letter, Johnson Development states that it intends to present information in support of its position to the Commission in its allowable *ex parte* briefing scheduled for June 26, 2019. In general, S.C. Code Ann. § 58-3-260 prohibits discussion with the Commission about procedural matters that are in controversy. See S.C. Code Ann. § 58-3-260(B) and (C)(1). The matters addressed herein are procedural issues in controversy. If an oral argument is scheduled, it would be inappropriate for Johnson Development to address this matter at its June 26, 2019 allowable *ex parte* briefing unless the Commission schedules the oral argument or hearing for 20 business days after the *ex parte* briefing. See 58-3-260(C)(6)(vi) restricting an allowable *ex parte* briefing from being held within 20 business days prior to a hearing in a proceeding of the same subject matter.

The Honorable Jocelyn G. Boyd
June 20, 2019
Page 4

The Companies appreciate the Commission's prompt attention to these matters. Should you have any questions regarding this request, please do not hesitate to contact me at 803.988.7130.

Sincerely,



Rebecca J. Dulin

cc: Ms. Becky Dover, SC Department of Consumer Affairs
Ms. Carri Grube-Lybarker, SC Department of Consumer Affairs
Mr. James Goldin, Nelson Mullins Riley & Scarborough, LLP
Mr. Weston Adams, III, Nelson Mullins Riley & Scarborough, LLP
Mr. Jeffrey Nelson, Office of Regulatory Staff
Mr. Richard L. Whitt, Austin & Rogers, P.A.
Ms. Heather Shirley Smith, Duke Energy Corporation

June 24, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Each Electrical Utility's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended)
Docket No. 2019-176-E
Docket No. 2019-185-E (Duke Energy Carolinas, LLC)
Docket No. 2019-186-E (Duke Energy Progress, LLC)

Dear Ms. Boyd,

On June 21, 2019, Johnson Development Associates, Inc. ("Johnson Development") and the South Carolina Solar Business Alliance, Inc. ("SCSBA") filed a Joint Petition to Set Consolidated Schedule ("Joint Petition") in the above-referenced dockets. The procedural issues raised in the Joint Petition are the same issues raised in the Joint Comments filed by Johnson Development and SCSBA on June 18, 2019, to which Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP," and together with DEC, the "Companies" or "Duke") responded on June 20, 2019. The Companies continue to object to the proposed procedural approach set forth in Johnson Development's and SCSBA's Joint Comments, and therefore, object to the procedural schedule set forth in the Joint Petition for the reasons described in the Companies' letter filed on June 18, 2019.

Should you have any questions regarding this matter, please do not hesitate to contact me at 803.988.7130.

Sincerely,



Rebecca J. Dulin

cc: Ms. Becky Dover, SC Department of Consumer Affairs
Ms. Carri Grube-Lybarker, SC Department of Consumer Affairs
Mr. James Goldin, Nelson Mullins Riley & Scarborough, LLP
Mr. Weston Adams, III, Nelson Mullins Riley & Scarborough, LLP
Mr. Jeffrey Nelson, Office of Regulatory Staff
Mr. Richard L. Whitt, Austin & Rogers, P.A.
Ms. Heather Shirley Smith, Duke Energy Corporation

June 25, 2019

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, SC 29210

RE: South Carolina Energy Freedom Act (H.3659) Proceeding to Establish Each Electrical Utility's Standard Offer, Avoided Cost Methodologies, Form Contract Power Purchase Agreements, Commitment to Sell Forms, and Any Other Terms or Conditions Necessary (Includes Small Power Producers as Defined in 16 United States Code 796, as Amended)
Docket No. 2019-176-E
Docket No. 2019-185-E (Duke Energy Carolinas, LLC)
Docket No. 2019-186-E (Duke Energy Progress, LLC)

Dear Ms. Boyd,

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP,” and together with DEC, the “Companies” or “Duke”) are submitting the enclosed letter in response to the letter filed by Johnson Development Associates, Inc. (“Johnson Development”) and the South Carolina Solar Business Alliance, Inc. (“SCSBA”) on June 25, 2019 (“Johnson Development/SCSBA June 25 Letter”). The Johnson Development/SCSBA June 25 Letter is in response to the letter filed by Duke on June 20, 2019 and the letter filed by Dominion Energy South Carolina, Inc. (“DESC”) on June 24, 2019.

At issue in the litany of filings submitted in the above-referenced dockets is the manner in which the Commission should procedurally approach its statutory obligation under S.C. Code Ann. § 58-41-20(A) to approve each electrical utility’s standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other necessary terms and conditions (“PURPA Implementation and Administration Provisions”) by November 16, 2019. S.C. Code Ann. § 58-41-20(A)(2) requires that proceedings implementing the PURPA Implementation and Administration Provisions of Act 62 “shall include an opportunity for intervention, discovery, filed comments or testimony, and an evidentiary hearing.”

Under the approach advocated for by Johnson Development and SCSBA, the proceeding addressing avoided cost methodology, which Johnson Development and SCSBA refer to as a

The Honorable Jocelyn G. Boyd
 June 25, 2019
 Page 2

“consolidated preliminary phrase” would not permit discovery, testimony, or an evidentiary hearing. In an attempt to circumvent the statutory requirement in Section 58-41-20(A)(2), Johnson Development and SCSBA now characterize the decision to be made by the Commission with regard to the avoided cost methodology as “guidance” to be issued by the Commission. Referring to the outcome of the avoided cost methodology proceeding as “guidance” does not change the fact that any decision by the Commission in implementing the PURPA Implementation and Administration Provisions would be formal disposition of a proceeding¹ and would not absolve the Commission of its statutory obligation pursuant to Section 58-41-20(A)(2). The Companies read the Johnson Development/SCSBA June 25 Letter to admit that this “consolidated preliminary phrase” would not conform to the statutory requirements of Section 58-41-20(A)(2), and to argue that Section 58-41-20(A)(2) does not apply to all proceedings implementing the PURPA Implementation and Administration Provisions of Act 62. The language of Section 58-41-20(A)(2) is clear that the proceedings under this statutory subsection “shall include” an opportunity for (i) intervention; (ii) discovery; (iii) filed comments or testimony; and (iv) an evidentiary hearing. No support exists in the statute for excluding the proceeding related to the avoided cost methodology from this requirement.

The avoided cost methodology issues enumerated in the Johnson Development/SCSBA June 25 Letter on pages 2-3 are not simple issues of mere “framework”² as Johnson Development and SCSBA purport, but are complex and controversial topics that are often the subject of protracted litigation at other state utility commissions across the country, many of which have not been substantively addressed by this Commission. Notwithstanding the rights afforded to the parties pursuant to Section 58-41-20(A)(2), the right of procedural due process, as protected by Art. I § 22 of the State Constitution, entitles the parties to present evidence and participate in an evidentiary hearing on these issues. The South Carolina Supreme Court has provided that “[t]he fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review.” *Kuschner v. City of Planning Comm.*, 376 S.C., 165, 171, 656 S.E.2d 346, 350 (2008), *citing* S.C. Const. Art. I § 22; *Stono River Protection Assn. v. S.C. Dept. of Health and Env’tl. Control*, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). The procedural approach advocated for by Johnson Development and SCSBA would restrict Duke (and other parties) from this right.

In sum, the procedural approach and schedule supported by Johnson Development and SCSBA violates S.C. Code Ann. Section 58-41-20(A)(2) and the parties’ rights to procedural due

¹ See S.C. Code Ann. Regs. § 103-817(D).

² Consistent with the arguments offered by DESC, the Companies maintain that creating a “consistent [avoided cost] framework” across all electrical utilities, as recommended by Johnson Development and SCSBA is practically infeasible given the inherent differences between the electrical utilities and their individual avoided cost methodologies. Indeed, Johnson Development and SCSBA acknowledge in their Joint Comments filed on June 18, 2019, that “the Act does not prohibit each utility from adopting its own Commission-approved methodology to calculate avoided cost rates” and that “each of these methodologies can be implemented in various specific ways.” (Joint Comments at p. 2.) To that end, Duke maintains that no efficiencies can be gained by attempting to impose the same “framework” across multiple utilities that utilize different methodologies.

The Honorable Jocelyn G. Boyd
June 25, 2019
Page 3

process, in addition to presenting a wholly unworkable (and incomplete) procedure schedule that provides entirely insufficient time for these complex issues to be litigated and decided by the Commission. Therefore, for the reasons described herein and those described in the Companies' letters filed in the above-referenced dockets on June 20, 2019, the Companies respectfully request the Commission reject the proposed schedule of Johnson Development and SCSBA and adopt the procedural schedule filed by the Companies.

Should you have any questions regarding this request, please do not hesitate to contact me at 803.988.7130.

Sincerely,



Rebecca J. Dulin

cc: Ms. Becky Dover, SC Department of Consumer Affairs
Ms. Carri Grube-Lybarker, SC Department of Consumer Affairs
Mr. James Goldin, Nelson Mullins Riley & Scarborough, LLP
Mr. Weston Adams, III, Nelson Mullins Riley & Scarborough, LLP
Mr. Jeffrey Nelson, Office of Regulatory Staff
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Mr. Richard L. Whitt, Austin & Rogers, P.A.
Mr. K. Chad Burgess, Dominion Energy South Carolina, Inc.
Ms. Heather Shirley Smith, Duke Energy Corporation